

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JOSEPH SULLIVAN,

Civ. No. 07-6304-HO

Plaintiff,

ORDER

v.

Commissioner of Social Security,

Defendant.

Plaintiff filed this action for review of the decision of the Commissioner denying his application for disability insurance and supplemental security income benefits following remand from federal court.

On review of a decision of an administrative law judge in a case remanded by a federal court, the Appeals Council is not required to assume jurisdiction and consider new evidence, as plaintiff contends. 20 C.F.R. §§ 404.984, 416.1484. The Appeals Council found no reason to assume jurisdiction and nothing indicates that it considered evidence not considered by the ALJ, including the opinions of Drs. Carter and Monkarsh, which are

among papers from the Veterans Administration designated as "correspondence" in the court transcript index. (Tr. 482-84). The court, however, may remand a case to the Commissioner to take new material evidence which was not incorporated into the record for good cause. See 42 U.S.C. § 405(g) (sentence six). Good cause is not established for the failure to incorporate Dr. Monkarsh's October 9, 2002 report into the record before the April 20, 2004 hearing. (Tr. 490, 773). In contrast, good cause exists for the failure to incorporate Dr. Carter's report of the July 26, 2004 examination of plaintiff, which Dr. Carter approved one day after the date of the ALJ's decision. (Tr. 768). Dr. Carter's report is material because it evinces that plaintiff's symptoms of post traumatic stress disorder and other impairments increased during the period under review to the point that plaintiff would, under the VA's disability rating scheme, "benefit from additional compensation to the 100 percent level due to his unemployability," (Tr. 770-71), and there is a reasonable possibility that the evidence will result in a change of the Commissioner's decision that plaintiff is not disabled within the meaning of the Social Security Act.

Conclusion

For the foregoing reasons, this matter is remanded to the Commissioner to consider the August 8, 2005 report of Leslie Carter, Ph.D., appearing at pages 768-71 of the court transcript,

and to take such further actions as required by sentence six of
42 U.S.C. § 405(g).

IT IS SO ORDERED.

DATED this 25th day of February, 2009.

s/ Michael R. Hogan
United States District Judge